Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

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This issue contains:

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 84-195)

Change in the Customs Service Field Organization—Philadelphia Consolidation

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule and solicitation of comments.

SUMMARY: This document amends the Customs Regulations to change the Customs Service field organization by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry into a single port of entry with headquarters in Philadelphia. The consolidated port area includes the geographical territory of the existing three ports and the geographical limits of the City of Salem, New Jersey. Because Salem was not part of the original proposal and thus, the public was unable to comment upon this aspect, comments are invited regarding Salem's inclusion within the consolidated port area of Philadelphia.

EFFECTIVE DATE: The consolidation will be effective October 22, 1984. However, comments regarding the inclusion of Salem, New Jersey, within the consolidated port area of Philadelphia, Pennsylvania, will be received on or before November 20, 1984.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs published a notice of proposed rulemaking in the Federal Register on August 5, 1983

(48 FR 35666), proposing to amend section 101.3(b), Customs Regulations (19 CFR 101.3(b)), by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry into a single port of entry with headquarters in Philadelphia. The consolidated port area would have included the geographical territory of the existing three ports.

One particular benefit for Customs is that reimbursable travel expenses would be reduced 75–80 percent while the Customs response time would be decreased. Vessel entry activities would be reduced substantially for both vessel agents and the shipping industry. Vessel entrance and clearance would be facilitated for both vessel agents and their accounts at reduced costs.

Five comments were received in response to the proposal. Four commenters objected to any reduction in service at Chester. However, there will be no reduction in service. Customs service will continue to be provided at Chester, as appropriate, after the consolidation. The fifth comment was from the Bureau of the Census, regarding the possible loss of individual port vessel statistics after the consolidation. Census and Customs personnel will resolve this issue.

These amendments differ slightly from the notice proposing the change in that the geographical limits of the consolidated port area of Philadelphia have been extended to include Salem, New Jersey. Because Salem was not part of the original proposal, and thus, the public was unable to comment upon this aspect, comments are invited regarding Salem's inclusion within the consolidated port area of Philadelphia. If any changes are required after analysis of any comments received, another document will be published in the Federal Register. Thus, this document amends section 101.3(b), Customs Regulations (19 CFR 101.3(b)), to change the Customs field organization by consolidating the Philadelphia and Chester, Pennsylvania, and Wilmington, Delaware, ports of entry and the geographical territory of Salem, New Jersey, into a single port of entry with headquarters in Philadelphia.

Changes in the Customs Service Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5 (47 FR 2449), the geographical limits of the consolidated port of Philadelphia, Pennsylvania, are as follows:

The ports of Philadelphia, Pennsylvania (comprising the territory within the corporate limits of Philadelphia, Pennsylvania, Camden, Gloucester City, and Salem, New Jersey, the territory within the limits of the Boroughs of Brooklawn, National Park, and Paulsboro, and the townships of West Deptford and Greenwich, all in

New Jersey, the Borough of Folcroft and the Townships of Darby and Tinicum, all in Pennsylvania, and the territory between the Delaware River and U.S. Highway No. 13, in Bucks County, Pennsylvania, from the corporate limits of Philadelphia to and including Morrisville, Pennsylvania, and the territory between the Delaware River and U.S. Highway No. 130 and U.S. Highway No. 206, in Camden, Burlington, and Mercer Counties, New Jersey, from the corporate limits of Camden, New Jersey, to and including Trenton, New Jersey), Chester, Pennsylvania (comprising the territory within the corporate limits of Chester, Pennsylvania, the territory within the limits of the Boroughs of Marcus Hook, Trainer, Upland, Parkside, Eddystone, and the Townships of Lower Chichester and Ridley, all in Pennsylvania, and the territory extending along the Pennsylvania side of the Delaware River from Darby Creek to the Delaware State line, a distance of approximately 10 miles), and Wilmington, Delaware (comprising the territory within the corporate limits of Wilmington, Delaware, the territory within the limits of New Castle, Newport, and Claymont, Delaware, and the territory within the limits of Carneys Point and Deep Water Point, New Jersey, and the territory lying between U.S. Highway No. 13 and the Delaware River, from the corporate limits of Wilmington to the Chesapeake and Delaware Canal, Delaware).

COMMENTS

While adopting these amendments, consideration will be given to any written comments timely submitted to the Commissioner of Customs relating specifically to the inclusion of Salem, New Jersey, within the consolidated port area of Philadelphia. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229. If any changes are required after analysis of any comments received regarding the inclusion of Salem, New Jersey, within the Philadelphia port consolidation, another document will be published in the Federal Register.

LIST OF SUBJECTS

Customs duties and inspection, imports, organization.

AMENDMENTS TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

To reflect this change, the list of Customs regions, districts, and ports of entry in section 101.3(b), Customs Regulations (19 CFR 101.3(b)), in the Philadelphia, Pennsylvania, Customs district of the Northeast Region, is amended in the following manner:

1. By removing the words "PHILADELPHIA, PA., including Camden and Gloucester City, N.J., and territory described in E.O. 7840, Mar. 15, 1938; 3 FR 687; T.D. 53738 and T.D. 54303," under the column headed "Ports of entry" and inserting, in their place, the words "PHILADELPHIA-CHESTER, PA. and WILMINGTON, DEL., including Camden, Gloucester City, and Salem, N.J., and territory described in T.D. 84-195".

2. By removing the words "Chester, Pa. (E.O. 7706, Sept. 11, 1937; 2 FR 1848).".

3. By removing the words "Wilmington, Del., including territory described in T.D. 54202 (E.O. 4496, Aug. 12, 1926).".

EXECUTIVE ORDER 12291

Because these amendments relate to the organization of the Customs Service, pursuant to section 1(a)(3) of E.O. 12291, it is not subject to that Executive Order.

REGULATORY FLEXIBILITY ACT

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to these amendments. Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this change may have a limited effect upon some small entities in the Philadelphia and Chester, Pennsylvania; Wilmington, Delaware; and Salem, New Jersey; areas, it is not expected to be significant because the extension of the limits of Customs ports of entry in other locations has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act. Accordingly, it is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that the amendments will not have a significant economic impact on a substantial number of small entities.

DRAFTING INFORMATION

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: Sept. 7, 1984.

JOHN M. WALKER, Jr.,
Assistant Secretary of the Treasury.

[Published in the Federal Register, September 21, 1984 (49 FR 37057)]

U.S. Customs Service

General Notices

Application for Recordation of Trade Name: "ACME PREMIUM SUPPLY CORP."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "ACME PREMIUM SUPPLY CORP." used by Acme Premium Supply Corp., a corporation organized under the laws of the State of Missouri, located at 4100 Forest Park Boulevard, St. Louis Missouri 63108.

The application states that the trade name is used in connection with the following merchandise manufactured in China, Taiwan, Korea and Hong Kong: stuffed toys, inflatable toys, plastic toys, novelty items, hats, caps and figurines.

Before final action is taken on the application, consideration will be given to any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before November 23, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5765).

Dated: September 18, 1984.

DONALD W. LEWIS,
Director, Entry Procedures
and Penalties Division.

[Published in the Federal Register, September 24, 1984 (49 FR 37507)]

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Certain Imported Athletic Shoes

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party with respect to the tariff classification of certain imported athletic shoes to be donated to the Special Olympics. The petitioner contends that the merchandise is currently incorrectly classified under a duty-free provision of the Tariff Schedules of the United States, and should be reclassified under any of various provisions of the tariff schedules for shoes which carry a specific duty rate. This document invites comments with respect to the correctness of the current classification of the footwear.

DATE: Comments must be received on or before November 20, 1984.

ADDRESS: Comments (preferably in triplicate) may be submitted to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a domestic interested party petition has been filed with respect to the tariff classification of certain imported athletic shoes which are to be donated to the Special Olympics.

The subject merchandise is currently classified as being "regalia" under item 851.30, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), a duty-free provision pursuant to a ruling issued by Customs on June 28, 1983 (Headquarters Ruling 071226/171356 TL). Under that ruling, the shoes will be given to children who participate in Special Olympics athletic activities. They will remain the property of the Special Olympics and may be used by the participants for the duration of their involvement in Special Olympics programs. Each pair of shoes is stenciled with the Special Olympics

logo. The petitioner contends that the imported athletic shoes do not qualify as "regalia" and should instead be classified under an appropriate tariff provision in Schedule 7, Part 1, Subpart A, TSUS, depending upon the characteristics of the particular shoe. The provisions urged by the petitioner all carry duty rates.

Item 851.30 TSUS, is governed by the headnotes to Part 4, Schedule 8, TSUS. Those headnotes set forth qualifying conditions to be met for all articles classifiable in that Part, including articles considered "regalia." The arguments made by the petitioner against classification of the shoes as "regalia" are all directly reflective of either those headnote requirements, or the superior heading to item 851.30, TSUS, itself. The arguments are:

(1) Special Olympics is not a "nonprofit" institution established for educational, scientific, literary, or philosophical purposes, or for the encouragement of the fine arts within the meaning of the superior heading to item 851.30, TSUS;

(2) The imported footwear are articles of "regular wearing apparel" which are not included within the purview of the term "regalia";

(3) They are not "such insignia of rank or office, emblems, or other articles as may be worn upon the person or borne in the hand during public exercises" of an eligible institution within the meaning of Headnote 2, Part 4, Schedule 8, TSUS;

(4) There is no proof that such footwear satisfies the condition that they be worn only during public exercises of the Special Olympics; and

(5) They are not exclusively for the use of the Special Olympics but are for distribution other than by way of transfer permitted by Headnote 1, Part 4, Schedule 8, TSUS.

COMMENTS

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on the classification and appraisement issues.

The domestic interested party petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. and 4:30 p.m. on regular business days, at the Regulations Control Branch, Headquarters, U.S. Customs Service, Room 2426, Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: September 12, 1984.
EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 21, 1984 (49 FR 37204)]

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19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Tariff Classification of a Vehicle Known as a "Unimog"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party requesting the reclassification of a vehicle known as a "Unimog". The petitioner contends the current tariff classification by Customs of the vehicle as a "tractor suitable for agricultural use" is incorrect and that it should be classified as an "automobile truck valued at $1,000 or more for the transport of persons or articles". This document invites comments with regard to the correctness of the current classification.

DATE: Comments must be received on or before November 23, 1984.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: John Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition has been filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), on behalf of an American manufacturer of rotary snow blowers and snow removal equipment. The petitioner contends that an imported vehicle known as a "Unimog", currently classified by Customs as a "tractor suitable for agricultural

use" under item 692.34, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202), is more accurately classifiable as an "automobile truck valued at $1,000 or more for the transport of persons or articles" and thus should be classified for Customs purposes under item 692.02, TSUS. The tractor classification results in the importation of "Unimogs" free of duty, whereas the automobile truck classification would carry a 25 percent ad valorem rate of duty under item 945.69, TSUS, because articles classified under item 692.02, TSUS, are subject to a temporary tariff modification pursuant to section 252 of the Trade Expansion Act of 1962 (Pub. L. 87-794).

The "Unimog" is a six cylinder, diesel engine, 4-wheel drive vehicle capable of many uses through the addition of attachments for tasks such as snow removal, grass mowing and street sweeping. The petitioner's argument for reclassification is based primarily on a comparison of the "Unimog" with an agricultural tractor. Petitioner's contentions are that "Unimogs" are not used for agricultural purposes in any significant numbers, need licenses for highway use in California whereas agricultural tractors do not, can attain much higher speeds than agricultural tractors and are capable of many sophisticated uses compared to the "simple push-pull" functions of an agricultural tractor.

Petitioner also argues that "Unimogs" should be classified like other 4-wheel drive trucks and believes the current classification is failing to provide the protection to domestic manufacturers usually provided by tariff laws.

As alternatives to classification under item 692.02, TSUS, "automobile truck valued at $1,000 or more for the transport of persons or articles", petitioner also believes the "Unimog" could properly be reclassified under item 692.35, TSUS, as "other tractor", or item 678.50, TSUS, "a machine not specifically provided for". Either alternative, in petitioner's opinion, would more accurately reflect the "Unimog's" sophistication and infrequent use for agricultural purposes, characteristics not taken into account in the current classification.

COMMENTS

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on the matter, Customs invites written comments on the petition from interested parties.

The domestic interested party petition, as well as all comments received in response to this notice will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and § 1.6, Treasury Department Regulations (31 CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between the hours of 9:00 a.m. to 4:30 p.m. on regular business days, at the Regulations Control Branch, Room 2426, Headquarters, U.S.

Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

AUTHORITY

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: September 12, 1984.
EDWARD T. STEVENSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, September 24, 1984 (49 FR 37506)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

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Edward D. Re

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Decisions of the United States Court of International Trade

(Slip Op. 84–102)

SAMUEL KATUNICH, JANE H.M. RIGO AND GUY SERRA, PLAINTIFFS, *v.* RAYMOND J. DONOVAN, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, DEFENDANT

Court No. 81-9-01158

Before: RE, *Chief Judge.*

ON PLAINTIFFS' MOTION FOR REVIEW OF ADMINISTRATIVE DETERMINATION UPON AGENCY RECORD

Plaintiffs, on behalf of the former employees of U.S. Steel's Monroeville, Pennsylvania, research laboratory, challenge the Secretary of Labor's denial of certification of eligibility for trade adjustment assistance benefits. Plaintiffs contend that the Secretary's failure to comply with section 223(a) of the Trade Act of 1974 deprives him of jurisdiction. Plaintiffs also contend that the method utilized by the Secretary, to determine whether increased imports "contributed importantly" to their separation from employment, was defective, and thus, the Secretary's final determination was not supported by substantial evidence, and was not in accordance with law.

Held: Since section 223(a) is not a "mandatory" statutory provision, and plaintiffs were not prejudiced by the Secretary's non-compliance with that section, the Secretary's jurisdiction is unaffected. As to plaintiffs' second claim, the court holds that the method utilized by the Secretary evidences inconsistent application of data, and reliance upon incomplete data, which renders it so defective that his final determination was not supported by substantial evidence, and was not in accordance with law.

[The Secretary's determination is vacated and the action is remanded.]

(Decided September 6, 1984)

Samuel Katunich, Jane H.M. Rigo and Guy Serra, pro se.

J. Paul McGrath, Assistant Attorney General; *David M. Cohen,* Director, Commercial Litigation Branch (*Sheila N. Ziff* on the brief), for the defendant.

RE, *Chief Judge:* In this action, plaintiffs, on behalf of the former employees of U.S. Steel's Monroeville, Pennsylvania, research laboratory (Monroeville laboratory), challenge the denial of certification of eligibility for trade adjustment assistance benefits made by the Secretary of Labor pursuant to the Trade Act of 1974. 19 U.S.C. §§ 2101–2487 (1982). The Secretary found that the former employees of the Monroeville laboratory were employed by a firm that did not produce an article "like or directly competitive" with an article which was adversely affected by increased imports. Hence, they were not eligible for certification for trade adjustment assistance benefits.

Two questions are presented for determination:

> (1) Whether the failure of the Secretary to make his eligibility determination within the sixty day period set forth in section 223(a) of the Trade Act of 1974, 19 U.S.C. § 2273(a), deprives him of jurisdiction; and, if not
>
> (2) Whether the Secretary's final determination, that increased imports did not contribute importantly to plaintiffs' separation from employment, was supported by substantial evidence, and was in accordance with law.

Since the court finds that section 223(a) is not a "mandatory" statutory provision, and that plaintiffs were not prejudiced by the Secretary's non-compliance with that section, it is the holding of the court that the Secretary's jurisdiction is unaffected. The court also holds that, since the method utilized by the Secretary in interpreting the existence of "increases of imports" was defective, the Secretary's final determination was not supported by substantial evidence, and was not in accordance with law.

BACKGROUND

In *Katunich* v. *Donovan,* 5 CIT ——, Slip Op. 83-60 (June 17, 1983), this Court previously reviewed the administrative record in this action, and found that it was incomplete since the Secretary had failed to include the factual basis for his final determination. Specifically, the court found that:

> [A]lthough the record contains what appears to be production data for various U.S. Steel facilities for the year 1979, it is devoid of comparable data for those same facilities for the relevant months in 1980. Also conspicuously absent from the record is any

import data for like or directly competitive steel products for the applicable period.

5 CIT at ——, slip op. at 2. Under these circumstances, the court was unable properly to assess the record, and weigh the competing needs of the parties for the information sought to be disclosed. Consequently, the court remanded the action to the Secretary with instructions that he furnish the court with the basis of his final determination.

In compliance with the court's order, the Secretary conducted a further investigation, and, on July 11, 1983, submitted a supplemental administrative record with additional information to support his determination. After reviewing the administrative record a second time, and considering the plaintiffs' need for data in the prosecution of their case, as well as the Secretary's need to obtain confidential business information for future administrative proceedings, on November 3, 1983, the court granted plaintiffs' motion for disclosure. *Katunich* v. *Donovan,* 6 CIT ——, Slip Op. 83-113 (Nov. 3, 1983). The court also directed that this action be submitted for determination upon the administrative record as prescribed by Rule 56.1 of this Court.

The Secretary denied plaintiffs' petition because it failed to satisfy the third eligibility criterion, *i.e.,* plaintiffs' employer, U.S. Steel, did not produce an article "like or directly competitive" with an article "adversely affected" by increased imports. 19 U.S.C. § 2274(3) (1982).

On August 13, 1980, plaintiffs, on behalf of the employees at the Monroeville laboratory of U.S. Steel, filed a petition with the Secretary for certification of eligibility for trade adjustment assistance benefits. Plaintiffs contended that increased imports of steel "contributed importantly" to the decline in sales and production at U.S. Steel, and ultimately to their separation from employment. Plaintiffs, therefore, contended that they were entitled to certification.

Subsequently, the Secretary commenced an investigation and published a notice of the receipt of plaintiffs' petition and of the investigation. 45 Fed. Reg. 59,457 (1980). The Secretary's investigation disclosed that workers at the Monroeville laboratory provided technical support services for U.S. Steel. The laboratory, staffed primarily by scientists and technicians, operates complex analyzing and computing equipment as well as a small scale steelmaking facility. The functions of the Monroeville laboratory include: 1) the development of new manufacturing processes; 2) the creation of new products; 3) the determination, in conjunction with engineering and accounting personnel, of the most profitable product lines for the company; and 4) the improvement of quality control.

The Secretary's investigation further disclosed that, on April 7, 1978, the Monroeville laboratory workers were previously certified by the Secretary as eligible for adjustment assistance benefits. 43 Fed. Reg. 17,088 (1978).

In that prior determination, the Secretary found that the employees of the Monroeville laboratory performed services which were integral to the production of all steel products produced by U.S. Steel. The Secretary also found that the employees, totally or partially separated from employment during the period from October 15, 1975 through June 26, 1977, were certified as eligible for adjustment assistance, since they had been engaged in employment related to approximately fifty percent of U.S. Steel's total production.

Pursuant to the Trade Act of 1974, in order for a group of workers to be eligible for certification, they must have been engaged in employment related to the production of an article "adversely affected" by increased imports. 19 U.S.C. § 2272(3) (1982). A group of workers may also obtain certification, however, if their separation from employment was caused importantly by a reduction for their services originating at facilities whose workers' independently met the statutory criterion. *Katunich* v. *Donovan,* 6 CIT ——, slip op. at 2. Thus, the service workers at the Monroeville laboratory were certified as eligible for assistance in April, 1978, because fifty percent of the workers engaged in *production* at various U.S. Steel plants had been *independently certified* as eligible for adjustment assistance benefits.

As to plaintiffs' petition in this case, the Secretary found that U.S. Steel's economic position had changed from that existing at the time of the previous certification. The average number of employees at the Monroeville laboratory decreased each year since 1978, with the largest decline occurring in 1980. Contemporaneously, the number of employees engaged in *production* at U.S. Steel plants who were certified as eligible for adjustment assistance also decreased. Similarly, in 1979 the number of *production* workers certified as eligible for such assistance accounted for only 8.5 percent of U.S. Steel's total production during 1979. Based on these findings, the Secretary concluded that the workers at the Monroeville laboratory did not produce an "article" as required for certification under section 222, and, therefore, issued a negative determination on plaintiffs' petition. 46 Fed. Reg. 35,825 (1981).

Plaintiffs requested a reconsideration of the Secretary's negative determination. In dismissing plaintiffs' application for reconsideration, the Secretary explained that plaintiffs' contention, that their separation from employment was due to an "increase of imports" affecting domestic steel shipments, does not automatically justify their certification. The Secretary reiterated that plaintiffs' eligibility is based upon the certification of *production* workers at the various U.S. Steel mills, and that, currently, the production workers are "inadequate" to provide such a basis. On September 4, 1981, pursuant to section 284(a) of the Trade Act of 1974, 19 U.S.C. § 2395(a) (1982), by letter complaint, plaintiffs commenced this

action seeking judicial review of the Secretary's negative determination.

JURISDICTION

Initially, plaintiffs contend that they are entitled to relief as a result of the Secretary's failure to follow the procedural requirements of the Trade Act of 1974. Specifically, plaintiffs allege that their rights were infringed by the Secretary's action, since it was made approximately ten months after the filing of their petition, in violation of the prescribed sixty day statutory period found in section 223(a) of the Trade Act of 1974, 19 U.S.C. § 2273(a) (1982).

The Secretary does not dispute that he did not observe the statutory sixty day period prescribed in the statute. Nevertheless, he maintains that, since Congress failed to include any provisions for non-compliance, the sixty day provision is not mandatory. Furthermore, the Secretary asserts that his delay in making the determination was not an unreasonable one, since during the applicable period there was a severe backlog of cases requiring investigations on the *production* workers at U.S. Steel. Finally, the Secretary submits that, as a result, his determination as to plaintiffs' petition could not have been made before these investigations were concluded.

Section 223(a) of the Trade Act of 1974, 19 U.S.C. § 2273(a) provides:

> (a) As soon as possible after the date on which a petition is filed under section 2271 of this title, but in any event not later than 60 days after that date, the Secretary shall determine whether the petitioning group meets the requirements of section 2272 of this title and shall issue a certification of eligibility to apply for assistance under this part covering workers in any group which meets such requirements. Each certification shall specify the date on which the total or partial separation began or threatened to begin.

Id.

It is axiomatic that the Secretary of Labor, as a public official, should comply with statutory provisions of law. *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 129 (1940); *JoAnna Western Mills Co.* v. *United States*, 64 Cust. Ct. 218, 227, C.D. 3983, 311 F. Supp. 1328, 1335 (1970). The question presented for determination, however, is the legal effect of the Secretary's failure to comply with a provision of section 223(a) of the Trade Act of 1974. The threshold question, therefore, is whether the sixty day requirement contained in section 223(a), in the traditional language of the courts, is a "mandatory" or "directory" provision of law.

It is well established that in determining whether a provision is mandatory or directory, one must "look to the subject matter; consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to

be secured by the Act; * * *." *JoAnna Western,* 311 F. Supp. at 1335 (quoting *Howard* v. *Bodington,* L.R. 2 P. Div. 203, 211 (1877)).

The primary purpose of the trade adjustment assistance program is to ameliorate the consequences of economic dislocation occasioned by increased imports. Also, because of the *ex parte* nature of the certification process, and the remedial purpose of the trade adjustment assistance program, the Secretary is obliged to conduct his investigation with the utmost regard for the interest of the petitioning employees. *Local 167, International Molders and Allied Workers' Union* v. *Marshall,* 643 F.2d 26, 31 (1st Cir. 1981). It is clear that Congress also desired the expeditious treatment of adjustment assistance petitions. It should be noted, however, that the Act "neither purports to restrain the Secretary from acting after 60 days have passed nor specifies that an adverse consequence follows after the Secretary's failure to comply." *Usery* v. *Whitin Machine Works, Inc.,* 554 F.2d 498, 501 (1st Cir. 1977).

In *Usery,* the Court of Appeals for the First Circuit examined whether the Secretary's failure to make his eligibility determination within the sixty day period deprived him of jurisdiction. In that case, the Secretary filed a complaint to enforce a subpoena that ordered defendant Whitin to furnish material the Secretary deemed necessary for his determination. Whitin interposed the defense that the subpoena exceeded the Secretary's authority since it was untimely and overbroad. The district court dismissed the complaint on the ground that the sixty day period was a limitation on the Secretary's jurisdiction, and that, by failing to make an eligibility determination within that period, the Secretary lost his authority to proceed with the matter.

In reversing the district court's decision, the Court of Appeals held that the Secretary was not deprived of jurisdiction by reason of his failure to make an eligibility determination within sixty days. The court concluded that the decision of the district court was at variance with the remedial nature of the trade adjustment assistance program, since the objective of the Act is to provide broad assistance to all workers who become unemployed as a result of increased imports. Hence, the court reasoned that "it would be ironic, indeed, to convert this seemingly remedial provision into one which would have the effect of denying any benefits." 554 F.2d at 502. Consequently, the Court of Appeals held that the sixty day provision contained in section 223(a) was not a mandatory provision of law.

The court, however, chose not to refer to the provision as directory, since it expressed "no opinion as to whether workers or their representative could enforce compliance with the time limitation by way of an action in the nature of mandamus." 554 F.2d at 503. In addition to the non-mandatory nature of the provision, it is also well established that a court will not set aside any action unless the procedural errors complained of were prejudicial to the parties

seeking to have the action declared invalid. *John V. Carr & Son, Inc.* v. *United States,* 69 Cust. Ct. 78, 87, C.D. 4377, 347 F. Supp. 1390, 1397 (1972), *aff'd,* 61 CCPA 52, C.A.D. 1118, 496 F.2d 1225 (1974); *Abbott* v. *Donovan,* 6 CIT ——, 570 F. Supp. 41, 49 (1983).

This Court, guided by the reasoning of *Usery,* agrees with the Secretary's assertion that the procedural provision in question is not mandatory. The court finds that this statutory requirement is intended to secure order and dispatch in proceedings for adjustment assistance benefits. The procedural error complained of, whether or not excusable, did not exclude from the administrative record any facts which are pertinent to the Secretary's determination. Furthermore, plaintiffs were neither injured nor prejudiced by the non-compliance with the sixty day provision set forth in the statute. Under the circumstances, therefore, the court holds that the Secretary was not deprived of jurisdiction.

The Secretary's Method and Final Determination

The next question is whether the method adopted by the Secretary was so defective that his conclusion, that increased imports did not contribute importantly to plaintiffs' separation from employment, was supported by substantial evidence, and was in accordance with law.

The Secretary concluded that "there were no increases of imports" that "contributed importantly" to plaintiffs' separation within the meaning of 19 U.S.C. § 2272(3). It is plaintiffs' principal contention that the method used by the Secretary in arriving at that conclusion is erroneous and not in accordance with law. Specifically, plaintiffs argue that, in determining whether there has been an "increase of imports," the Secretary is obligated to compare the year preceding the year of separation with the actual year of separation, in this case, the years, 1979 and 1980. The administrative record discloses that a basic comparison of import statistics between those two years indicates a relevant increase in imports in the year 1980 over the year 1979. Plaintiffs also contend that the Secretary's reliance upon 1979 data is misplaced because of the exclusion from that data of the pending certification of U.S. Steel's Fairless Hills plant.

The Secretary responds that reliance upon the 1979 data was reasonable and in accordance with law because the case files "lacked 1980 data or contained incomplete data." The Secretary also contends that, even if complete 1980 data were available, only data in certifications preceding August 1980, when plaintiffs' petition was filed, could have been used. Under these circumstances, the Secretary asserts that plaintiffs' contention, that the investigation was incomplete, is "speculative and irrelevant."

The Trade Act of 1974 empowers this Court to review a determination by the Secretary of Labor, which denies certification of eligibility for trade adjustment assistance benefits, to assure that it is

supported by substantial evidence contained in the administrative record, and is in accordance with law. Section 284(b) of the Trade Act of 1974, 19 U.S.C. § 2395(b) (1982). The legislative history of the Act reveals that its purpose is to provide greater access, and more effective relief to industry, firms and workers that are seriously injured, or threatened with serious injury, by increased imports. Congress approved major modifications in the existing program of trade adjustment assistance for workers displaced by increased imports. These changes were designed to make the program more accessible to the workers. S. Rep. No. 93–1298, 93rd Cong. 2d Sess., *reprinted in* 1974 U.S. Code Cong., & Ad. News 7186–7205, 7275. To qualify for these benefits, a group of workers, their union or other authorized representative must file a petition with the Secretary for certification of eligibility to apply for adjustment assistance. In order to be certified as eligible to apply for adjustment assistance three statutory eligibility requirements must be met.

Section 222 of the Trade Act of 1974, 19 U.S.C. § 2272 (1982), requires that the Secretary shall certify a group of workers as eligible to apply for trade adjustment assistance if he determines:

> (1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated,
>
> (2) That sales or production, or both, of such firm or subdivision have decreased absolutely, and
>
> (3) That increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

Id.

In this case, the court must focus on the Secretary's negative determination of the third criterion which contains the key phrase "increases of imports."

There is no dispute that plaintiffs are service workers engaged in various activities related to the production of steel, and that their efforts are distributed evenly throughout U.S. Steel's production facilities. Nevertheless, the Secretary may certify plaintiffs for adjustment assistance benefits only if their separation from employment was "caused importantly" by a reduced demand for their services. In addition, the reduced demand must have originated at facilities whose employees independently meet the statutory criteria of section 222, and must have related directly to the production adversely impacted by increased imports. The Secretary, however, found that these conditions were not met by plaintiffs, and rested his decision on the fact that certified workers at the company represented only 8.5 percent of U.S. Steel's total shipments in 1979. Certifications of employees at U.S. Steel which expired in 1979 or

early 1980, however, were not included in determining the number of certified workers at U.S. Steel. Indeed, a majority of the case files for the company for 1980 lacked data or contained incomplete data.

In the supplemental administrative record the Secretary has provided data that shows a decline in the average number of employees at the Monroeville laboratory from 1978, when they were first certified, through the first eight months of 1982. In further explaining his negative determination, the Secretary lists the names of the U.S. Steel mills, the petition number, and the date of issuance of his denial of certification for *production* workers during 1980 and 1981. The Secretary also lists those employees at the Monroeville laboratory who are currently eligible to apply for adjustment assistance benefits by the certification issued on May 24, 1982, and reiterates that they were previously certified for adjustment assistance benefits on November 18, 1977.

What is in question is the validity of the method utilized by the Secretary in finding that "increases of imports" did not contribute importantly to the separation of the employees at the Monroeville laboratory.

While the court may identify flaws in the method used by the Secretary, it is not the court's function to substitute its own method of analysis for that of the Secretary. Rather, the court will defer to the Secretary's chosen method, and remand for corrective action only "if that technique is so marred that the Secretary's finding is arbitrary, or of such a nature that it could not be based on 'substantial evidence.' " *United Glass & Ceramic Workers* v. *Marshall,* 584 F.2d 398, 405 (D.C. Cir. 1978).

The method by which the Secretary attempts to answer the question whether "increases of imports" contributed importantly to the separation of *service* workers will, of course, vary with the nature of the work performed by them, and the structure of the industry. In this case, to determine the impact of imports upon the Monroeville laboratory workers, the Secretary's method was to take the total number of shipments made in 1979, *i.e.,* production, and divide that figure by the number of certified production workers for the same period. This calculation resulted in a production/certification ratio, 8.5%, which could be compared with production/certification ratios of prior years when the Secretary granted certification of eligibility for adjustment assistance benefits.

In explaining the use of 1979 as the base year for his determination, the Secretary indicated that "1980 would have been a better year for the present analysis, however, most of the case files lacked 1980 data or contained incomplete 1980 data."

What constitutes an appropriate base period for determining an increase in imports was first examined in *Paden* v. *United States Dep't of Labor,* 562 F.2d 470 (7th Cir. 1977). In *Paden,* the Secretary compared import levels in the year of separation with the import

levels of the immediately preceding year to determine the existence of increases in imports. Plaintiffs had contended that further comparisons should be made, such as a comparison of the year of separation with prior years, and a comparison between prior years. The Secretary submitted that confining consideration to imports during the year of separation and the immediate preceding year allowed him to focus on those imports which were most likely to affect employment in the year of separation. This, the Secretary maintained, diminished the effect of those factors which, while affecting employment, were not intended to be covered by the Act.

In affirming the Secretary, the Court of Appeals for the Seventh Circuit held that, in the absence of a valid reason to consider a different base period, the use of only the year of separation, as the base period for determining "increases of imports," was not erroneous.

The Secretary's method in limiting his assessment of worker injury to "increases of imports" and to a comparison of the year of separation with the prior year was recently reaffirmed by this Court in *International Union, United Auto, Aerospace and Agricultural Implement Workers* v. *Donovan,* 8 CIT——, Slip Op. 84-82 (July 10, 1984).

In this case, the administrative record discloses that in the prior and subsequent certifications at the Monroeville laboratory, the Secretary applied the method of comparing the year of separation with the prior year to determine whether "increases of imports" contributed importantly to their separation. In the earlier certification of April 1978, TA-W-2788, the Secretary determined that the workers at the Monroeville laboratory were eligible for trade adjustment assistance benefits. The Secretary based his determination on a comparison of data of previously certified *production* workers having "various impact dates from October 15, 1975 through June 26, 1977." In the subsequent certification of May 1982, TA-W-13,521, wherein the workers were separated on May 25, 1981, the Secretary also based his determination upon "a comparison of the data for the years 1981 to 1980, and 1982 to 1981."

In the instant determination, however, the Secretary, rather than compare the year of separation, 1980, with the immediately preceding year, 1979, chose to compare a production/certification ratio for 1979 with ratios for 1978 and 1977. It is clear, therefore, that the method chosen by the Secretary to determine that "increases of imports" had not "contributed importantly" to the separation of the Monroeville laboratory employees is not only inconsistent with prior case law, but with his own rulings. Moreover, the Secretary has not supplied a valid reason to explain why the court should consider a base period other than the one enunciated and utilized in prior cases. *Secretary of Agriculture* v. *United States,* 347 U.S. 645, 653 (1954); *Public Interest Research Group* v. *F.C.C.,* 522 F.2d 1060, 1065 (1st Cir. 1975), *cert. denied,* 424 U.S. 965 (1976).

Plaintiffs also point to the data in Table A in the supplemental administrative record as further support for their contention that "imports continued to significantly decrease steel production." A careful examination of Table A, however, reveals that a comparison of imports to shipments shows an increase of imports for the first three months in 1980 compared to the same period in 1979, and that the data in Table A relates to *nationwide* imports of *basic* steel products. Since the data as to imports of basic steel products cannot support a finding that meets the statutory criterion, this argument is not persuasive. Furthermore, although a nationwide increase in imports would ordinarily be an absolute prerequisite to certification under the Act, plaintiffs, in this case, may be certified for eligibility only if the reduction in the demand for their services originated at a production facility whose workers independently met the statutory criterion. In addition, the reduction in demand for services must have related directly to the production adversely affected by increased imports.

In explaining the underlying factor for the *subsequent* certification of the Monroeville laboratory employees, and the denial of their present petition, the Secretary indicates that the "economic picture subsequently shifted." In support of that contention, he points to the table, in the supplementary record, of the "most recent certifications of U.S. Steel production facilities." The Secretary states that this table indicates that certified production represented 8.5% of U.S. Steel's shipments in 1979. The table also shows that *certified production represented* 35.4% in 1980, and 36.7% in 1981.

Implicit in the foregoing calculation for the year 1980, is that the Secretary had all of the required basic data necessary for its computation. It is not clear how the Secretary has now discovered the basic data required for his calculation for the year 1980. It is also not clear why the data for the relevant months in 1980 was not considered by the Secretary for his determination pursuant to the remand in *Katunich* v. *Donovan,* 5 CIT ——, Slip Op. 83-60 (June 17, 1983). Since the Secretary found that certified production represented *8.5%* of U.S. Steel's total shipments in *1979,* and *35.4%* in *1980,* it is evident that, if the data for the relevant months of *1980* were considered by the Secretary and compared with the data of the previous year, there may have been an affirmative determination of plaintiffs' petition.

Conclusion

In light of the Secretary's admission that "1980 would have been a better year for the present analysis," it was incumbent upon the Secretary to make a greater effort to obtain the required information. The record does not reveal any efforts made by the Secretary to obtain the necessary information for a meaningful evaluation of plaintiffs' petition.

The court, therefore, finds that the method utilized by the Secretary in interpreting the existence of "increases of imports" evidences inconsistent application of data, and reliance upon incomplete data which renders it defective. Furthermore, the Secretary has not proffered a valid reason for the court to consider a base period other than the one enunciated in prior cases.

In view of the foregoing, it is the determination of this Court that the method utilized in this case which led to the Secretary's determination that "increases of imports" did not contribute importantly to plaintiffs' separation from employment, is not supported by substantial evidence, and is not in accordance with law.

Accordingly, it is hereby

Ordered that the Secretary of Labor's determination is vacated and the action is remanded; and it is

Further Ordered that the Secretary of Labor prepare and issue a final determination, consistent with the foregoing opinion, within 60 days of this Order; and it is

Further Ordered that the Secretary of Labor, through counsel, provide the Court with a copy of his final determination within 5 days of its issuance.

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DEPARTMENT OF THE TREASURY, *September 12, 1984.*

Inited States Court of International Trade at New York are officers of the Customs and others concerned. Although the print in full, the summary herein given will be of assistance acing important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSE
				Item No. and
P84/370	Re, C.J. September 5, 1984	Hanover Glove Co.	83-8-01088	Item 705.35 15%
P84/371	Re, C.J. September 6, 1984	The Metropolitan Museum of Art	81-6-00726, etc.	Item 256.56 10% or 9.3¢
P84/372	DiCarlo, J. September 6, 1984	F.W. Woolworth Co.	84-3-00471	Item 389.62 21¢ per lb. 14%
P84/373	DiCarlo, J. September 6, 1984	Jawhar Trading Co.	83-2-00252	Items 716.10-716.29 Various rat merchand marked " Items 716.10-716.29 Various rat merchand marked " Items 720.20, 720.24, or 720.28 Various rat for case portion, merchand marked " Item 740.35 Various rat for band portion, merchand marked "

SSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
No. and Rate	Item No. and Rate		
05.35	Item A735.06 Free of duty pursuant to GSP	Agreed statement of facts	Baltimore Ski mittens product of an eligible beneficiary country
56.56 or 9.3%	Item 274.10 6¢ per lb. or 5¢ per lb.	Charles Scribner's Son v. U.S., S.O. 83-98	New York Birthday books
89.62 per lb. plus %	Item A748.21 Free of duty pursuant to GSP	Agreed statement of facts	New Orleans Artificial foliage
716.10– 6.29 ous rates for erchandise arked "A" 716.10– 6.29 ous rates for erchandise arked "B" 720.20, 0.24, or 0.28 ous rates case rtion, erchandise arked "B" 40.35 ous rates band rtion, erchandise arked "B"	Item 688.36 5.1% or 4.9% for merchandise marked "A" and "B"	Agreed statement of facts	Norfolk Electronic watch modules and electronic watches

P84/374	DiCarlo, J. September 6, 1984	Low Price Enterprises, Inc.	82–8–01225	Item 737.95 16.2%
P84/375	DiCarlo, J. September 7, 1984	Norstan Industries, Inc.	80–3–00491, etc.	Merchandise classified u item 807.0 the rate of applicable items 382.(382.04, 382 382.81 with allowance under item 807.00, to v value of sc the fabric component which wer product of U.S. and u in assembl the import merchandi no allowar under iten 807.00 was for fabric component product of U.S., subje to buttonh and/or slit operations during ass

737.95 2%	Item A737.15 Free of duty pursuant to GSP for racing cars Item A685.60 Free of duty pursuant to GSP for hand-held remote controls	Agreed statement of facts	San Juan Porsche racing car models with separate hand-held remote controls
handise ssified under n 807.00 at rate of duty plicable under ns 382.00, .04, 382.33, .81 with an owance given der item .00, to cost or ue of some of fabric nponents ich were the duct of the S. and utilized assembling imported rchandise— allowance der item .00 was made fabric nponents, the duct of the S., subjected buttonhole d/or slit erations ring assembly	Buttonhole and/or slit operations are subject to duty allowance under item 807.00	U.S. v. Mast Industries, 69 CCPA 47 (1981)	Miami Wearing apparel

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED
				Item No. and R
P84/376	Watson, J. September 11, 1984	Louis Barasch Inc.	82-3-00324	Item 382.00 35%

ESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
. and Rate	Item No. and Rate		
.00	Item 382.81 25¢ per lb. plus 27.5%	Brittania Sportswear v. U.S., S.O. 83-46	New York Wearing apparel

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS VALUA
R84/378	Watson, J. September 5, 1984	The Akron	269608-A, etc.	Export val
R84/379	Watson, J. September 5, 1984	E. Mishan & Sons	R63/2719, etc.	Export val
R84/380	Watson, J. September 5, 1984	Empire Findings Co.	R59/12403, etc.	Export val

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BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
ort value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Binoculars
ort value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	New York Transistor radios together with their accessories and parts; entirety
ort value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	New York Thermometers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS VALUA
R84/381	Watson, J. September 5, 1984	Louis Goldey Co.	R66/6353, etc.	Export val
R84/382	Watson, J. September 5, 1984	New York Merchandise Co.	R59/10567, etc.	Export val
R84/383	Watson, J. September 5, 1984	New York Merchandise Co.	R59/14732, etc.	Export val
R84/384	Watson, J. September 5, 1984	New York Merchandise Co.	R61/4194	Export val
R84/385	Watson, J. September 5, 1984	New York Merchandise Co.	R62/6029, etc.	Export val
R84/386	Watson, J. September 5, 1984	New York Merchandise Co.	R62/9810	Export val

BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
ort value	Appraised unit values less 7.5% thereof	Agreed statement of facts	Boston Ceramic tiles
ort value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Binoculars
ort value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Transistor radios together with their accessories and parts; entirety
ort value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Rugs
ort value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	San Diego Transistor radios together with their accessories and parts; entirety
ort value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Los Angeles Porcelain Ware

R84/387	Watson, J. September 5, 1984	New York Co.	Merchandise	R64/3199	Export v
R84/388	Watson, J. September 5, 1984	New York Co.	Merchandise	R64/11333	Export v
R84/389	Watson, J. September 5, 1984	New York Co.	Merchandise	R65/14117, etc.	Export v
R84/390	Watson, J. September 5, 1984	New York Co.	Merchandise	R65/23277	Export v
R84/391	Watson, J. September 5, 1984	Normandy Corp.	Distributors	R63/2912, etc.	Export v
R84/392	Re, C.J. September 6, 1984	Alexander's Inc.		76-5-01085, etc.	Export v

Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Honolulu Transistor radios together with their accessories and parts; entirety
Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	Honolulu Dinnerware
Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Transistor radios together with their accessories and parts; entirety
Export value	Appraised unit values less 7.5% thereof, net packed	Agreed statement of facts	San Francisco Ceramic tableware
Export value	F.o.b. unit values plus 20% of difference between f.o.b. unit prices and appraised values	Agreed statement of facts	New York Transistor radios together with their accessories and parts; entirety
Export values	Appraised values shown on entry papers less additions included to reflect currency revaluation	Agreed statement of facts	New York Not stated

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION
R84/393	Re, C.J. September 6, 1984	Sara International, Inc.	81-8-01028	Constructed val

IS OF VATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
ted value	Entered values less cost or value of fabricated components, the product of the U.S.	Judgment on the pleadings	Miami Ladies' blouses and trousers

Appeal to the U.S. Court of Appeals for the Federal Circuit

APPEAL No. 84-1638 Vivitar Corporation *v.* The United States—GREY MARKET GOODS AND CUSTOMS REGULATIONS CONCERNING THE IMPORTATION OF THEM—Appeal from Slip Op. 84-95, filed August 27, 1984.

Decision of U.S. Court of Appeals for the Federal Circuit

APPEAL No. 84-678 V.G. Nahrgang Co. f/a Anthony Paglialungo *v.* The United States—WATERPROOFING MATERIAL—Appeal from Slip Op. 83-84, filed November 25, 1983—Affirmed August 16, 1984.

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